

*a***VP NATHAN & PARTNERS****v.****LINGOVAN DORAIRAJ A SUPPIAH & ANOR***b*

HIGH COURT MALAYA, PENANG

RK NATHAN J

[ORIGINATING MOTION NOS: 25-43-2000 & 25-44-2000]

31 OCTOBER 2001

*c***LABOUR LAW:** *Employment - Resignation - Whether compulsory resignation - Whether amounted to dismissal without just cause and excuse**d***LABOUR LAW:** *Industrial Court - Decision - Whether decision affected by delay in delivering award - Whether evidence and credibility of witnesses affected - Whether Industrial Court relied more on evidence adduced rather than on demeanour of witnesses**e***LABOUR LAW:** *Industrial Court - Decision - Whether Industrial Court rightfully held that there was compulsory resignation - Whether amounted to dismissal without just cause and excuse**f***LABOUR LAW:** *Industrial Court - Award - Quantum of backwages - Whether fact that claimants were gainfully employed since dismissal was taken into account**g*

The respondents ('claimants') were advocates and solicitors employed by the applicant. They alleged that they were asked to resign by the managing partner of the applicant's firm, one Paul Manecksha as one of the applicant's main clients, Kurnia Insurance Berhad ('Kurnia') did not want both of them to handle their files. The matter was brought up to the Industrial Court who ruled in favour of the claimants and held that there was involuntary resignation which amounted to dismissal without just cause and excuse. The applicant, however, contended that the claimants resigned on their own accord which led to its present application for *certiorari* to quash the award of the Industrial Court.

Held:*h*

[1] The applicant had not shown any illegality, irrationality or procedural impropriety in the decision of the Industrial Court. The theme of the applicants' attack was based only on criticisms of the award. (p 255 g)

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- [2] On the question of delay on the part of the Chairman of the Industrial Court in delivering his award a year later, not all delays in writing a judgment must be viewed as affecting the judge's mind with respect to demeanour and conduct of witnesses, thus affecting their evidence and/or their credibility. Unless specific instances are shown in the delayed judgment whereby the decision-maker had expressly or impliedly relied on demeanour to arrive at his decision, delay *per se* ought not to weigh against that judgment. The court was of the view that the Chairman was in fact persuaded by the evidence adduced more than on the demeanour of witnesses. (pp 255 h-i & 256 a-c) a
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- [3] The Chairman had correctly held that the burden was on the claimants to show that the resignation was not voluntary. Since there were no complaints as to the conduct of the claimants and as there was sufficient work still left for them to handle in the applicant's firm, the court could not but conclude that this was a clear case of the applicant's resignation not being voluntary. Further, despite their vociferous protestations against the claimants handling their cases, Kurnia allowed the claimants to handle some of their files from 14 April 1997 to 31 April 1997. In the circumstances, the court agreed with the finding of the Chairman that the claimants were dismissed without just cause and excuse. (pp 257 f, 258 g-i & 259 a-b) c
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- [4] What weighed heavily against the applicant was the evidence of Paul Manecksha. His testimony that he told the claimants that they could handle matters which were non-Kurnia matters was not averred in the applicant's statement in reply. It also never appeared in his affidavit filed in support of this application. That such a suggestion was even made to the claimants was not even put to them in cross-examination. Notwithstanding the accepted fact that in Industrial Court matters, the court does not stick to strict rules of evidence, such a blatant omission to put one's own case to the claimants during cross-examination could not be excused, more so when the applicant itself was attempting to rely on that statement. The said omission alone must draw the required adverse inference against the appellant that such a suggestion that the claimants could do non-Kurnia matters was never made to them. Since Paul Manecksha had testified that he did make that offer, therefore the claimants could have been retained to do the non-Kurnia files. On that ground too, the court found that the claimants' resignations were not voluntarily made. (p 259 c-f) f
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- [5] As there was clear evidence that both the claimants had been gainfully employed since immediately after their termination, *albeit*, at a reduced salary, it was necessary therefore to quash the award of backwages and to revert it back to the chairman for a re-assessment. (p 260 b-c) i

[Application for certiorari dismissed; each party to bear own costs.]

a Case(s) referred to:

Airspace Management Services Sdn Bhd v. Col (B) Harbans Singh Chingar Singh [2000] 4 CLJ 77 (**refd**)

Food Specialities (M) Sdn Bhd v. Encik M Halim Manap [1992] 2 ILR 311 (**fol**)

Goon Kwee Phoy v. JP Coats (M) Sdn Bhd [1981] 2 MLJ 129 (**refd**)

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia [1996] 4 CLJ 687 (**fol**)

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Dr James Alfred, Sabah v. Koperasi Serbaguna Sanya Bhd, Sabah & Anor [2001] 3 CLJ 541 (**fol**)

Mas Golden Boutique Sdn Bhd v. Md Zain Abu [1999] 3 CLJ 610 (**refd**)

National Union of Plantation Workers v. Kumpulan Jerai Sdn Bhd [2000] 1 CLJ 681 (**refd**)

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Petroleum Nasional Bhd v. Nik Ramli Nik Hassan [2000] 2 CLJ 244 (**refd**)

Quah Swee Khoon v. Sime Darby Bhd [2001] 1 CLJ 9 (**refd**)

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 (**refd**)

For the applicant - N Sivabalah; M/s Shearn Delamore & Co

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For the respondents - Pravin Kaur Jessy; M/s Jessy & Assoc

Reported by Usha Thiagarajah

JUDGMENT**RK Nathan J:****e****Preamble****25-43-2000**

f This is an application by a firm of solicitors by way of a writ of *certiorari* for an order to quash the award of the Industrial Court in Award No. 453 of 2000 wherein Illangovan s/o Dorairaj A. Suppiah, the 1st claimant, who was employed by the applicant and who, contending wrongful dismissal, sought reinstatement or in lieu thereof compensation in lieu of reinstatement. Having heard both counsel and their submissions, the Industrial Court ruled that the dismissal of the claimant was without just cause and excuse. However, it

g denied reinstatement and made the following awards:

(i) Backwages from the date of dismissal to the last date of hearing (31 July 1997 to 12 July 1999):

- RM6,000 x 23 months and 11 days

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= RM140,200.

(ii) Compensation in lieu of reinstatement. (One month pay for every year of service. (Claimant joined the employment on 1 June 1990 for seven years):

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- RM6,000 x 7 = RM42,000.

(iii) Any other benefits (including bonuses) if any. a

(iv) The amounts awarded to be paid to the claimants' solicitors within one month from the date of the award.

25-44-2000

This is another application by the same firm of solicitors by way of a writ of *certiorari* for an order to quash the award of the Industrial Court in Award No. 452 of 2000 wherein Subramaniam s/o Govindan Nair, the second claimant, who was employed by the applicant and who, contending wrongful dismissal, also sought reinstatement. Having heard the arguments and the submissions, the Industrial Court ruled that the dismissal was without just cause and excuse. However, it again denied reinstatement and made the following awards: b

(i) Backwages from the date of dismissal to the last date of hearing (31 July 1997 to 12 July 1999): c

- RM6,000 x 23 months and 11 days d

= RM140,200.

(ii) Compensation in lieu of reinstatement. (One month pay for every year of service. (Claimant joined the employment on 1 June 1990 for seven years): e

- RM6,000 x 7 = RM42,000.

(iii) Any other benefits (including bonuses) if any. f

(iv) The amounts awarded to be paid to the claimant's solicitors within one month from the date of the award.

On the date fixed for hearing of both applications, parties requested that the cases be heard together. Subsequently parties further agreed that since the facts of both cases were identical this court could proceed with Application No. 25-43-2000 and that the parties in 25-44-2000 would be bound by the same decision since the same counsel were representing the parties in both the applications. g

The 1st claimant, an advocate and solicitor of the High Court of Malaya, commenced employment with the applicant's branch in Penang on 1 June 1990 as a Legal Assistant with a starting salary of RM2,000. His duties and responsibilities were primarily in connection with road accident cases. The scope of the 1st claimant's duties and responsibilities were as follows: h

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- a* (a) receiving instructions from the clients and applying for all necessary documentation from authorities, securing medical reports and specialist reports;
- (b) interviewing all relevant persons in connection with the claim;
- b* (c) corresponding with opposing solicitors and agreeing to documents;
- (d) attending on clients to prepare defences or further conduct of the action;
- (e) obtaining instructions from insurers to negotiate settlements or towards further conduct of the action;
- c* (f) attending court to litigate the cases up to judgment, updating client and advising client of the outcome of the trial and merits of appeal; and
- (g) preparing the memorandum of appeal in cases which are to be appealed and arguing the appeals and notifying client of the outcome.

d Sometime in early April 1997, Kurnia Insurance Berhad (“Kurnia”), one of the applicant’s main clients, instructed the principle partner of the applicant in Kuala Lumpur, Dato’ V.P. Nathan that the said insurers did not want both the claimants to handle any of their files. They did not provide reasons for the said instruction. The aforesaid instruction was conveyed to another partner, *e* Paul Manecksha by Dato’ V.P. Nathan. Paul Manecksha was the managing partner of the applicant’s firm in the Penang Branch. Paul Manecksha then verbally informed the claimants of the aforesaid instruction. It is not in dispute that notwithstanding the above instruction the claimants were allowed to continue to attend to Kurnia’s files. Upon discovering that the claimants were *f* still handling their files, Kurnia was annoyed by the applicant’s failure to comply with their instruction. Dato’ V.P. Nathan was accordingly instructed by Kurnia to preclude the claimants from handling any matters for Kurnia. Upon receiving the above-mentioned instruction, Dato’ V.P. Nathan again conveyed this message to Paul Manecksha.

g **Applicant’s Version Thereafter**

h It is the applicant’s case in both matters that having received the second instruction from Dato’ V.P. Nathan, Paul Manecksha subsequently (on 14 April 1997) had a meeting with the claimant. In the course of the discussions, the claimants had inquired about their employment prospects in the applicant’s firm. Paul Manecksha informed them that it would affect them in terms of their future increments and bonuses. He also mentioned that prospects of partnership were dim unless Kurnia reconsidered its decision. The claimants then told Paul Manecksha that if that was the situation, they might as well *i* leave the firm and seek employment elsewhere. Paul Manecksha then informed

the claimants that they need not leave immediately as they would have to provide the applicant with three months' notice of resignation. He then suggested that they leave on 31 July 1997. The claimants accordingly agreed to leave on 31 July 1997. *a*

The applicant received letters from the claimants dated 31 July 1997 which were replied by Paul Manecksha by his letters dated 5 August 1997. It is necessary to reproduce the same letters. *b*

D.S. Illangovan
No. 20, Jalan Bukit Indah
Taman Bukit Indah
14000 Bukit Mertajam. *c*

31st July 1997.

M/s V.P. Nathan & Partners
95 China Street,
10200 Penang. *d*

Attn: Mr. P.R. Manecksha

Dear Sir,

Re: Request For Resignation *e*

I refer to the conversation between Mr P.R. Manecksha and myself on 14th April 1997 on the above subject matter.

Mr P.R. Manecksha had asked for my resignation with effect from 31st July 1997. The reason for this was that the firm had taken a business decision that it was no longer economical to retain me and Mr G. Subramaniam as legal assistants. *f*

The above conversation took place in the presence of Mr G. Subramaniam.

In light of the above I have no alternative but to act as per Mr P.R. Manecksha's instructions. Thus my last working day will be 31st July 1997. *g*

Yours faithfully,

sgd. D.S. Illangovan

cc. M/s V.P. Nathan & Partners
Advocates and Solicitors
3rd Floor, No. 15, Jalan Medan Tuanku Satu
Off Jalan Tuanku Abdul Rahman
50300 Kuala Lumpur. *h*

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a A similar letter was sent to the second claimant in 25-44-2000.

V.P. Nathan & Partners
95, China Street,
10200 Penang, Malaysia.

b VPN/PRM/Misc.DS1 05th August 1997

Mr D.S. Illangovan
No. 20, Jalan Bukit Indah
Taman Bukit Indah
14000 Bukit Mertajam
Kedah Darul Aman

A.R. REGISTERED

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Dear Sir,

Re: Your Resignation

d Thank you for your letter dated 31/07/97 and wish to put the record straight.

Our Mr. Manecksha informed you that we had received instructions from our main client that they did not want you to handle any of their work. Under those circumstances you agreed to resign by the 31/07/97.

Yours faithfully,

e sgd. V.P. Nathan.

A similar letter was sent by the applicant to the claimant in 25-44-2000. The applicant contends that the decision of the Industrial Court is wrong both in fact and in law and seeks to quash the award. The applicant's attack is
f launched on two grounds:

1) that there was no dismissal of the claimants but that they resigned of their own accord.

2) the award of backwages ought to be set aside.

g **Functions Of The High Court In *Certiorari* Applications**

The function of the High Court in judicial review actions such as *certiorari* is supervisory and not appellate. The Court of Appeal in the recent case of *Quah Swee Khoo v. Sime Darby Bhd* [2001] 1 CLJ 9 held that it is not open for a court in judicial review proceedings to exercise appellate powers. If a judge to whom an application is made for an order for *certiorari*, enquires into and disturbs findings of facts based on the credibility of witnesses, he is actually exercising appellate functions. Therefore, the court held that it must be concluded that the finding of perversity is merely a guise for interfering with findings that are only capable of being corrected in the exercise of

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appellate jurisdiction. Yet in another recent decision the Court of Appeal in *Airspace Management Services Sdn Bhd v. Col (B) Harbans Singh a/l Chingar Singh* [2000] 4 CLJ 77 held that findings of facts based on credibility of witnesses as well as its decision to prefer the evidence of one party over another was outside the High Court's judicial review jurisdiction and the court was bound to accept such findings of the Industrial Court. It is trite that a High Court judge is bound to follow and be guided by the principles set out by its superior courts. Yet again in *National Union Of Plantation Workers v. Kumpulan Jerai Sdn Bhd* [2000] 1 CLJ 681 the Court of Appeal held that "It was wrong for the High Court in a supervisory role to substitute its findings of fact when such role was within the province of the Industrial Court." Yet again in *Petroliam Nasional Bhd v. Nik Ramli Nik Hassan* [2000] 2 CLJ 244 the Court of Appeal took the issue of findings of facts of the Industrial Court even a step further when it said at p. 248 as follows:

He has submitted, quite rightly, that once the Industrial Court made an evaluation rightly or wrongly and had arrived at a finding of fact, that finding was immunised from judicial review. (See *The State Of Madras v. G Sundaram* AIR [1965] SC 1103; *William Jacks & Co (M) Sdn Bhd v. S Balasingam* [1997] 3 CLJ 235.

To my mind the function of the High Court has been very clearly defined by these decisions of the Court of Appeal. However the decision of KC Vohrah J (as he then was) in *Mas Golden Boutique Sdn Bhd v. Md Zain Abu* [1999] 3 CLJ 610 needs mention. His Lordship said at p. 618 as follows:

... issues of facts are for the Industrial Court to decide and it is not open to the High Court to review findings of facts unless the material before the court shows illegality, irrationality or procedural impropriety in the decision.

I find that the applicant in this case has not shown any illegality, irrationally or procedural impropriety in the decision of the Industrial Court. The theme of the applicants' attack is based only on criticisms of the award. This is a far cry from the strict requirement to quash an order of the Industrial Court. The applicant also attacked the learned Chairman's observation of the witnesses in arriving at his decision by submitting that having delivered his award a year later there was no way he could relate to the observations made of the witnesses.

Whilst I agree that a year's delay could cloud an immediate impression that had been formed upon the mind of a judge of the demeanour and conduct of a witness, it is clear to me that when the learned Chairman said in his award at p. 12 "... and further having seen and heard both COW1 (Paul Manecksha) and the claimant leads this court to believe the claimant's evidence that he was told to tender his resignation from the firm with effect from 31 July 1997

- a* and that he did so as required of him.”, he was in fact persuaded by the evidence adduced, more than having to rely on demeanour, because earlier in his judgment at p. 10 he affirmed this view that I have formed, when he said “To determine whether the claimant voluntarily resigned or was forced into resigning, the conduct of the firm and its representative is material to this issue.
- b* The conduct of COW1 and his verbal communication to the claimant must be examined in the context of the circumstances. This must be viewed together with the conduct of the claimant in response to those circumstances.”

- It is important for me to appreciate that not all delays in writing a judgment must be viewed as affecting the judge’s mind with respect to demeanour and conduct of witnesses, thus affecting their evidence and/or their credibility.
- c* Unless specific instances are shown in the delayed judgment whereby the decision-maker had expressly or impliedly relied on demeanour to arrive at his decision, delay *per se* to my mind, ought not to weigh against that judgment.

d **The Function Of The Industrial Court**

The function of the Industrial Court has been very clearly laid out by the Federal Court in *Goon Kwee Phoy v. JP Coats (M) Sdn Bhd* [1981] 2 MLJ 129. Raja Azlan Shah CJ (as His Highness then was) said at p. 136 as follows:

- e* Where representations are made and referred to the Industrial Court for enquiry, it is the duty of the Court to determine whether the termination or dismissal is with or without just cause or excuse. The Court is to inquire into reasons/excuses given by the employer. If it finds the reasons/excuses have not been proven, the inevitable conclusion must be that the termination or dismissal is without just cause or excuse.
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Findings Of The Court

It is the contention of the applicant that the claimants had resigned voluntarily whereas the claimants contend that they were forced into resigning and that therefore this could not be construed as voluntary resignation, but as dismissals.

- g* In a very well written judgment the Chairman set the case of the parties very succinctly when he said at p. 9 as follows:

- h* The firm contends that the Claimant resigned voluntarily whereas the Claimant contends that he was forced into resigning and therefore not a voluntary resignation but a dismissal. That being the case the firm’s case is that it did not dismiss the Claimant. Therefore, it did not adduce any evidence to justify the dismissal (if any) as being with just cause or excuse if infact the cessation of employment of the Claimant is found to be a dismissal rather than a voluntary resignation. Thus, it is now necessary only to determine whether in effect there was a dismissal of the Claimant in the circumstances and if so
- i* the Claimant succeeds in establishing that the dismissal was without just cause or excuse.

The Chairman then quite correctly relied on the decision of *Food Specialities (M) Sdn Bhd v. Encik M Halim bin Manap @ Abd Manaf* [1992] 2 ILR 311 which held that the burden on a case where there is a resignation is on the employee to prove that he was forced into resignation and that it was not a voluntary act. a

Mr. Sivabalah, for the applicant in summarising the decision of the Court of Appeal in *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748 argued that a decision of the Industrial Court is liable to be quashed by way of an order of *certiorari* if: b

- (i) it took irrelevant matters into consideration. c
- (ii) it failed to take into account relevant matters into consideration;
- (iii) its decision was perverse or unreasonable;
- (iv) it acted on an incorrect basis of fact; d
- (v) it acted on no evidence.

Since these principles have received the final stamp of authority of the Federal Court in *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia* [1996] 4 CLJ 687, I am bound by these set principles. e

It is therefore incumbent upon this court to scrutinise the judgment of the learned Chairman to see if he had committed any of the errors of omission or commission as laid down in the above referred two cases.

I must also bear in mind the correct decision of the Chairman that the burden was on the claimant to show that the resignation was not voluntary. Paul Manecksha told the claimant at a discussion on 14 April 1997 to seek alternative employment after telling him that Kurnia did not want him to handle their files. He then told the claimants that a termination letter coming from the applicant would “look bad” and asked the claimant to tender his resignation. The claimant also told the court that towards the end of April 1997 he was called by Paul Manecksha and asked for the letter of resignation. Paul Manecksha in his examination-in-chief denied that he had told the claimant to leave or resign but he admitted that in answer to questions from the claimant during the discussion on 14 April 1997 he had told the claimant that his future increments in the firm may be affected and that prospects of partnership in the firm “did not appear very good”. In his statement in reply the applicant pleaded that at the meeting on 14 April 1997 the claimant was advised that his “career advancement and above all his ability to continue in his chosen field as an advocate and solicitor” would be materially affected f
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- a* because of Kurnia's instruction not to let him handle any of their files as Kurnia's files "accounted for an overwhelming proportion of the firm's work." It is necessary to relate these facts to delve into the issue of voluntary or forced resignation. To my mind the plea of the applicant that it had to bow to the whims of Kurnia because of its 'overwhelming proportion' of files
- b* would give the impression that almost the entire or at least the bulk of the applicant's work was from this insurer. As the evidence unfolded, this was indeed an untrue statement. As found by the learned Chairman evidence led showed that only 50% of the cases came from Kurnia whilst the rest were from other insurance companies. I have now to consider this untrue material
- c* statement that formed the basis of the applicant's dismissal of the claimants with the applicant's glowing appraisal of the claimant's conduct and work as an advocate and solicitor. Evidence was led that Paul Manecksha was also upset just as the claimant was when the claimant was told the second time that he was not to handle Kurnia's files. Paul Manecksha was upset because
- d* he had worked closely with the claimant for many years. Paul Manecksha further stated in evidence that if the claimants had not resigned the applicant would not have terminated their services as there were enough non-Kurnia files for them to handle. To my mind herein lies the answer to this question of forced or voluntary resignation. If Paul Manecksha had such generous thoughts towards the claimants this court wonders why he did not tell the claimants
- e* this when the claimants allegedly told him that since their prospects of increment and partnership would be affected they might as well resign and look for a job elsewhere. Evidence was led that the claimant had worked for seven years for the applicant and that there were no complaints with regard to the claimant's work. Why then did Paul Manecksha not tell the applicant
- f* that he could handle the rest of the files? Surely it is a matter of directing the other solicitors in the firm who have not been rejected by Kurnia to handle Kurnia's files and for these two claimants to take over the rest of the files. The remaining 50% of the applicant's work which came from other insurance companies had to be attended to also. This lack of candidness on the part of
- g* Paul Manecksha has clearly shown that the resignation was not voluntary. After all, since there were no complaints as to the conduct of the claimants and as there was sufficient work still left for them to handle in the applicant's firm, I cannot but conclude that this was a clear case of the applicant's resignation not being voluntary.
- h* Another astounding feature of this case is that in spite of their vociferous protestations against the claimants' handling their cases and which required two calls from Dato' V.P. Nathan to Paul Manecksha and with Paul Manecksha having two such meetings with the claimants, yet from 14 April 1997 to 31 April 1997 the claimant was allowed to handle 47 Kurnia files and 72 non
- i* Kurnia files and that Subramaniam (the claimant in 25-44-2000) 54 Kurnia

files and 65 non-Kurnia files. Why did Kurnia allow this if they totally disliked the claimants from handling their files? These questions had not been addressed by the applicant either in its evidence or in its submission. I am therefore satisfied that the resignation was not voluntary. In the circumstances the finding of the learned Chairman, that the claimant was dismissed without just cause is a finding that this court absolutely agrees with.

It is to be noted that as late as in December 1996 the claimant received an increment of RM1,000 as he did the previous year and the evidence of the claimant was that he gathered the impression, that Paul Manecksha regarded him highly.

To my mind what weighs heavily against the applicant is the evidence of Paul Manecksha. He testified that he told the claimants that they could handle matters which were non-Kurnia matters. Not only was this generous offer not averred in the applicant's statement in reply, it also never appeared in the affidavit of Paul Manecksha filed in support of this application. That such a suggestion was even made to the claimants, was not even put to the claimants in cross-examination. Notwithstanding the accepted fact that in Industrial Court matters the court does not stick to strict rules of evidence, surely such a blatant omission to put one's own case to the claimants during cross-examination cannot be excused; more so when the applicant itself is attempting to rely on this statement. This omission alone must draw the required adverse inference against the appellant that such a suggestion that the claimants could do non-Kurnia matters was never made to them. Since Paul Manecksha has testified that he did make that offer, therefore obviously the claimants could have been retained to do the non-Kurnia files. On this ground too I am compelled to agree with the finding of the learned Chairman that the claimants' resignations were not voluntarily made.

Backwages

The learned Chairman awarded backwages from the date of dismissal to the next date of hearing ie, from 31 July 1997 to 12 July 1999 at RM6,000 per month for 23 months and 11 days amounting to RM140,200.30. This award is attacked on the basis that the claimant in 25-44-00 was gainfully employed on his own admission as of 1 August 1997 with the firm of Ganesan & Co at a reduced salary of RM4,500, whereas the 1st claimant after leaving the applicant, opened his own firm on 13 August 1997. On 30 June 1998 he dissolved the firm and joined a firm called Shariful Sabaria also as a partner. He left the partnership on 30 June 1999 and started his own firm of Ilango and Co as of 1 July 1999.

- a* On this issue of backwages, I need to only refer to the latest authority. In *Dr James Alfred, Sabah v. Koperasi Serbaguna Sanya Bhd, Sabah & Anor* [2001] 3 CLJ 541 the Federal Court held that in line with equity and good conscience, when assessing the quantum of backwages the Industrial Court should, if established by evidence or by admission, take into account the fact that the
- b* claimant has been gainfully employed elsewhere after his dismissal and that the failure to do so constitutes a jurisdictional error of law. In the circumstances as there is clear evidence that both the claimants had been gainfully employed since immediately after their termination, *albeit* at a reduced salary, it is necessary, therefore, for me to quash the award of
- c* backwages and to revert it back to the learned Chairman for a re-assessment. Since each party succeeded on one issue each I ordered each party to bear its own costs.

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